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5 Attorney for Plaintiff:  
 6 BONNIE REGINA

7 **UNITED STATES DISTRICT COURT**  
 8 **NORTHERN DISTRICT OF CALIFORNIA**

9 BONNIE REGINA,

CASE NO. C07-03881 JCS  
Civil Rights

10 Plaintiff,

11 v.

**CONSENT DECREE AND [PROPOSED]**  
**ORDER**

12 QUEST DIAGNOSTICS, INC.; NDM,  
 13 LLC; and DOES 1-25, Inclusive,

14 Defendants.

15 /

16 **CONSENT DECREE AND ORDER**

17 1. Plaintiff BONNIE REGINA filed a Complaint in this action on July 30, 2007, to  
 18 obtain personal injury damages and to enforce provisions of the Americans with Disabilities  
 19 Act of 1990 ("ADA"), 42 U.S.C. §§ 12101 et seq., and California civil rights laws against  
 20 Defendants, QUEST DIAGNOSTICS, INC., NDM, LLC; and DOES 1-25, inclusive, relating  
 21 to the condition their public accommodations. Plaintiff has alleged that Defendants violated  
 22 Title III of the ADA and sections 51, 52, 54.1, and 55 of the California Civil Code, and sections  
 23 19955 *et seq.*, of the California Health and Safety Code by failing to provide full and equal  
 24 access to the facilities at 2519 Milvia Street, Berkeley, California.

25 2. Defendants QUEST DIAGNOSTICS, INC. and NDM, LLC deny the allegations  
 26 in the Complaint and by entering into this Consent Decree and Order do not admit liability to  
 27 any of the allegations in Plaintiff's Complaint filed in this action. The parties hereby enter into  
 28 this Consent Decree and Order for the purpose of resolving this lawsuit without the need for

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- 1 -

1 protracted litigation, and without the admission of any liability.

2

3 **JURISDICTION:**

4       3. The parties to this Consent Decree agree that the Court has jurisdiction of this  
 5 matter pursuant to 28 USC §1331 for alleged violations of the Americans with Disabilities Act  
 6 of 1990, 42 USC 12101 *et seq.* and pursuant to supplemental jurisdiction for alleged violations  
 7 of California Health & Safety Code §19955 *et seq.*, including §19959; Title 24 California Code  
 8 of Regulations; and California Civil Code §§51; 52; 54; 54.1; §54.3; and 55.

9       4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the  
 10 parties to this Consent Decree agree to entry of this Order to resolve all claims regarding  
 11 injunctive relief raised in the Complaint filed with this Court. Accordingly, they agree to the  
 12 entry of this Order without trial or further adjudication of any issues of fact or law concerning  
 13 plaintiff's claims for injunctive relief.

14           WHEREFORE, the parties to this Consent Decree hereby agree and stipulate to  
 15 the Court's entry of this Consent Decree and Order, which provides as follows:

16

17 **SETTLEMENT OF INJUNCTIVE RELIEF:**

18       5. This Order shall be a full, complete, and final disposition and settlement of  
 19 Plaintiff's claims against Defendants for injunctive relief that have arisen out of the subject  
 20 Complaint. The parties agree that there has been no admission or finding of liability or  
 21 violation of the ADA and/or California civil rights laws, and this Consent Decree and Order  
 22 should not be construed as such.

23       6. Defendant Quest Diagnostics, Inc. has vacated the subject premises, and  
 24 defendant NDM, LLC has withdrawn the property from the public rental market. Therefore,  
 25 the property will not be used as a public accommodation at this time. Defendant NDM, LLC  
 26 agrees that if the property is in future used as a public accommodation, it will be brought into  
 27 full compliance with all access codes, including but not limited to provision of accessible entry,  
 28 restroom, and parking. Plaintiff BONNIE REGINA and Defendant NDM, LLC agree and

1 stipulate that the corrective work will be performed in compliance with the standards and  
 2 specifications for disabled access as set forth in the California Code of Regulations, Title 24-2  
 3 and Americans with Disabilities Act Accessibility Guidelines, unless other standards are  
 4 specifically agreed to in this Consent Decree and Order.

5

6 **DAMAGES, ATTORNEY FEES, LITIGATION EXPENSES, AND COSTS:**

7. The parties have not reached an agreement regarding the parties' claims  
 8 and cross-claims for damages, attorney fees, litigation expenses and costs. These issues shall  
 9 be the subject of further negotiation, litigation, and/or motions to the Court.

10

11 **ENTIRE CONSENT ORDER:**

12. This Consent Decree and Order constitutes the entire agreement between the  
 13 signing parties on the matters of injunctive relief, and no other statement, promise, or  
 14 agreement, either written or oral, made by any of the parties or agents of any of the parties, that  
 15 is not contained in this written Consent Decree and Order, shall be enforceable regarding the  
 16 matters of injunctive relief described herein. This Consent Decree and Order applies to  
 17 plaintiff's claims for injunctive relief only and does not resolve plaintiff's claims for damages,  
 18 attorney fees, litigation expenses and costs, which shall be the subject of further negotiation  
 19 and/or litigation.

20

21 **CONSENT ORDER BINDING ON PARTIES AND SUCCESSORS IN INTEREST:**

22. This Consent Decree and Order shall be binding on Plaintiff BONNIE  
 23 REGINA; Defendants QUEST DIAGNOSTICS, INC. and NDM, LLC; and any successors in  
 24 interest. The parties have a duty to so notify all such successors in interest of the existence and  
 25 terms of this Consent Decree and Order during the period of the Court's jurisdiction of this  
 26 Consent Decree and Order.

27

28 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS TO**

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**INJUNCTIVE RELIEF ONLY:**

10. Each of the parties to this Consent Decree understands and agrees that there is a  
 11 risk and possibility that, subsequent to the execution of this Consent Decree, any or all of them  
 12 will incur, suffer, or experience some further loss or damage with respect to the Lawsuit which  
 13 are unknown or unanticipated at the time this Consent Decree is signed. Except for all  
 14 obligations required in this Consent Decree, the parties intend that this Consent Decree apply to  
 15 all such further loss with respect to the Lawsuit, except those caused by the parties subsequent  
 16 to the execution of this Consent Decree. Therefore, except for all obligations required in this  
 17 Consent Decree, this Consent Decree shall apply to and cover any and all claims, demands,  
 18 actions and causes of action by the parties to this Consent Decree with respect to the Lawsuit,  
 19 whether the same are known, unknown or hereafter discovered or ascertained, and the  
 20 provisions of Section 1542 of the California Civil Code are hereby expressly waived. Section  
 21 1542 provides as follows:

22           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
 23           CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE  
 24           TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST  
 25           HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

26 This waiver applies to the injunctive relief aspects of this action only and does not include  
 27 resolution of plaintiff's claims for damages, attorney fees, litigation expenses and costs.

28 11. Except for all obligations required in this Consent Decree, and exclusive of the  
 29 referenced continuing claims and cross-claims for damages, statutory attorney fees, litigation  
 30 expenses and costs, each of the parties to this Consent Decree, on behalf of each, their  
 31 respective agents, representatives, predecessors, successors, heirs, partners and assigns, releases  
 32 and forever discharges each other Party and all officers, directors, shareholders, subsidiaries,  
 33 joint venturers, stockholders, partners, parent companies, employees, agents, attorneys,  
 34 insurance carriers, heirs, predecessors, and representatives of each other Party, from all claims,  
 35 demands, actions, and causes of action of whatever kind or nature, presently known or  
 36 unknown, arising out of or in any way connected with the Lawsuit.

**TERM OF THE CONSENT DECREE AND ORDER:**

12. This Consent Decree and Order shall be in full force and effect for a period of  
 13 twelve (12) months after the date of entry of this Consent Decree and Order, or until the  
 14 injunctive relief contemplated by this Order is completed, whichever occurs later. The Court  
 15 shall retain jurisdiction of this action to enforce provisions of this Order for twelve (12) months  
 16 after the date of this Consent Decree, or until the injunctive relief contemplated by this Order is  
 17 completed, whichever occurs later.

**SEVERABILITY:**

13. If any term of this Consent Decree and Order is determined by any court to be  
 14 unenforceable, the other terms of this Consent Decree and Order shall nonetheless remain in  
 15 full force and effect.

**SIGNATORIES BIND PARTIES:**

14. Signatories on the behalf of the parties represent that they are authorized to bind  
 15 the parties to this Consent Decree and Order. This Consent Decree and Order may be signed in  
 16 counterparts and a facsimile signature shall have the same force and effect as an original  
 17 signature.

18 Dated: June 17, 2008

19  
 20 /s/ Bonita (Bonnie) Regina  
 21 Plaintiff BONNIE REGINA

22 Dated: June 12, 2008

23  
 24 /s/ Kimbra Lozano  
 25 Defendant QUEST DIAGNOSTICS, INC.

26 Dated: June 17, 2008

27  
 28 /s/ Yochai (Joe) Kidron  
 29 Defendant NDM, LLC

**APPROVED AS TO FORM:**

Dated: June 17, 2008

PAUL L. REIN  
JULIE A. OSTIL  
ANN M. WINTERMAN  
LAW OFFICES OF PAUL L. REIN

Dated: June 12, 2008

JOSEPH D. MILLER  
EPSTEIN, BECKER, and GREEN, PC

Dated: June 17, 2008

JACK C. PROVINE  
KATHRYN J. ALLEN  
SHAPIRO, BUCHMAN, PROVINE, AND  
PATTON, LLP

## ORDER

Pursuant to stipulation, and for good cause shown, **IT IS SO ORDERED.**

Dated:

**HON. JOSEPH C. SPERO  
U.S. MAGISTRATE JUDGE**